



Legislation Text

File #: 14-0521, Version: 3

Dept/ Agency: Finance

Action: () Ratifying (X) Authorizing (X) Amending

Purpose: Amending and Approving Form of Sale of City-Secured Bonds

Amount to be Financed: \$15,000,000.00

Source of Appropriation: Bonds

Purchaser:

Project Information:

(Description/ Project No./ Amount Appropriated/Ordinance No.)

Additional Information:

RESOLUTION OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, AMENDING RESOLUTION NO. 7R5A ADOPTED ON MARCH 19, 2014 AND ENTITLED "RESOLUTION DETERMINING THE FORM AND OTHER DETAILS OF NOT EXCEEDING \$15,000,000 SEWER UTILITY BONDS, SERIES 2014, OF THE COUNTY OF ESSEX, NEW JERSEY, AND PROVIDING FOR THEIR SALE TO THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AND THE STATE OF NEW JERSEY, PURSUANT TO THE 2014 NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST FINANCING PROGRAM" IN ORDER TO QUALIFY SUCH BONDS UNDER THE MUNICIPAL QUALIFIED BOND ACT.

WHEREAS, the Municipal Council of the City of Newark, in the County of Essex, New Jersey (the "City" or the "Local Unit") has adopted the bond ordinances listed on the attached Appendix A (the "Ordinances"), authorizing the issuance of bonds (the "Bonds") and bond anticipation notes of the City for the purpose of financing a portion of the sewer improvements described in the Ordinances (collectively, the "Project"); and

WHEREAS, on March 19, 2014, the City adopted Resolution. 7R5A entitled: "RESOLUTION DETERMINING THE FORM AND OTHER DETAILS OF NOT EXCEEDING \$15,000,000 SEWER UTILITY BONDS, SERIES 2014, OF THE CITY OF NEWARK IN THE COUNTY OF ESSEX, NEW JERSEY, AND PROVIDING FOR THEIR SALE TO THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AND THE STATE OF NEW JERSEY, PURSUANT TO THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST FINANCING PROGRAM" (the "Bond Resolution"); and

WHEREAS, the Bond Resolution authorized the sale of the City's Bonds in an amount not exceeding \$15,000,000 in order to finance various improvements to the City's sewer system, as described in the Ordinances; and

WHEREAS, the New Jersey Environmental Infrastructure Trust and the State of New Jersey have requested that the City qualify the Bonds under the Municipal Qualified Bond Act, N.J.S.A.

40A3-1 et seq; and

WHEREAS, in its Resolution adopted on October 9, 2013, the Local Finance Board approved the issuance of the Bonds as qualified bonds, subject to the City agreeing to the following covenants:

(i) that the Chief Financial Officer of the municipality shall file realized Revenue Statements on a monthly basis with the Executive Secretary of the Local Finance Board;

(ii) that for the duration of the outstanding qualified bonds, all future capital authorizations whether fully funded or funded through bonds and/or notes shall require approval from the Local Finance Board after introduction of the ordinances and before final passage;

(iii) that the Chief Financial Officer shall provide the Local Finance Board with a Report which details the status of all Bond Ordinances included with the approved bond issue;

(iv) that a condition for closing of the subject Qualified Bond Issue shall be that the Chief Financial Officer of the municipality shall certify at time of closing that the Treasurer of the State of New Jersey has been notified as to the details of the Bond Issue pursuant to the Municipal Qualified Bond Act and, further, that said certification filed at closing shall also be promptly forwarded to both the State Treasurer and the Local Finance Board after closing; and

(v) that the Governing Body of the applicant municipality shall adopt a resolution which recognized these provisos as binding obligations upon all officials of said municipality.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, (by a 2/3 vote of the full membership of the Governing Body of the City) AS FOLLOWS:

1. Section (d) of the Bond Resolution shall be amended by adding the following section 4 thereto:

4. Bonds to be Qualified Bonds. The Bonds shall be issued as "qualified bonds" under, and shall be entitled to the benefits of, the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1 et seq., and the Local Unit shall comply in all respects with the Resolutions of the Local Finance Board adopted on October 9, 2013 in connection therewith. The Local Unit hereby acknowledges and recognizes that the provisos as contained in said Local Finance Board resolution shall constitute binding obligations upon all officials of the Local Unit. The Acting Chief Financial Officer of the Local Unit is hereby authorized and directed to certify to the State Treasurer the name and address of the Paying Agent, the maturity schedules, the interest rate (s) and the dates of payment of debt service on the Bonds within 10 days after the issuance of the Bonds.

2. The City hereby designates TD Bank, National Association as its paying agent with respect to the Bonds. An Agency Agreement in substantially the form attached hereto as Exhibit A is hereby approved, with such changes as may be approved by the Acting Director of Finance.

3. This resolution shall take effect immediately.

4. Upon the adoption hereof, the City Clerk shall forward certified copies of this resolution to GluckWalrath LLP, bond counsel to the Local Unit, and Richard T. Nolan, Esq., McCarter & English, LLP, bond counsel to the Trust.

Statement

Resolution Amending Prior Resolution to Subject Bonds to Municipal Qualified Bond Act (MQBA).

APPENDIX A

#6S&FAS07252005 and entitled "BOND ORDINANCE PROVIDING FOR SEWER UTILITY IMPROVEMENTS IN THE CITY OF NEWARK, APPROPRIATING \$29,500,000 THEREFORE AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$29,500,000 OF BONDS AND/OR NOTES OF THE CITY OF NEWARK FOR FINANCING SAID PURPOSES SET FORTH HEREIN AND AUTHORIZED TO BE UNDERTAKEN BY THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY" adopted on July 25, 2005.

#6PSFD11072013 and entitled "BOND ORDINANCE OF THE CITY OF NEWARK, COUNTY OF ESSEX AMENDING CERTAIN OF THE PURPOSES OF BOND ORDINANCE NO. 6F&SA07252005, PREVIOUSLY ADOPTED BY THE CITY OF NEWARK" adopted on November 7, 2013.

6PSFa11072013 and entitled "A BOND ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR SEWER UTILITY CAPITAL IMPROVEMENTS AND OTHER RELATED EXPENSES IN AND FOR THE CITY OF NEWARK AND APPROPRIATING \$17,750,000 THEREFOR, AND PROVIDING FOR THE ISSUANCE OF \$17,750,000 IN BONDS OR NOTES OF THE CITY OF NEWARK TO FINANCE THE SAME" adopted on November 7, 2013.

Exhibit A

AGENCY AGREEMENT

between

**CITY OF NEWARK, IN THE COUNTY
OF ESSEX, NEW JERSEY**

and

TD BANK, NATIONAL ASSOCIATION

relating to

CITY OF NEWARK
IN THE COUNTY OF ESSEX, NEW JERSEY

[\$ _____] QUALIFIED SEWER UTILITY BONDS, SERIES 2014A-1]
[\$ _____] QUALIFIED SEWER UTILITY BONDS, SERIES 2014A-2]
[\$ _____] QUALIFIED SEWER UTILITY BONDS, SERIES 2014B-1]
[\$ _____] QUALIFIED SEWER UTILITY BONDS, SERIES 2014B-2]

Dated _____, 2014

Exhibit A

AGENCY AGREEMENT

THIS AGENCY AGREEMENT ("Agreement"), dated as below indicated, by and between TD Bank, National Association, a national banking association duly organized under the laws of the United States of America with a place of business in Cherry Hill, New Jersey ("Bank") and the organization identified below ("Issuer");

WITNESSETH

WHEREAS, pursuant to the laws of the State of New Jersey, the Issuer has authorized the issuance, sale and delivery of bonds ("Bonds") referenced on the cover page hereof; and

WHEREAS, the Issuer has requested the Bank to serve as paying agent for the Bonds ("Paying Agent") and the Bank has accepted its appointment and agreed to act as Paying Agent.

NOW, THEREFORE, the parties each intending to be legally bound, agree as follows:

AMENDMENTS: This Agreement shall continue in effect and renew automatically on each bond principal payment date, subject to change upon thirty (30) days prior written notice until the final maturity of the Bonds. Either the Paying Agent or the Issuer may terminate this Agreement at any time by providing thirty (30) days prior written notice thereof delivered to the other. This Agreement may be amended at any time by the mutual written consent of both parties.

II. BOND PAYMENTS :

A. The Issuer shall deposit, or cause to be deposited, with the Paying Agent an amount equivalent to the interest and/or principal due on the Bonds in immediately available funds ("Debt Service Amount") on or before each interest and/or principal payment date ("Payment Date"). Debt Service Amounts shall be collected by the Paying Agent from the Issuer through an electronic debit from the Issuer's designated account set forth on the attached Automated Clearing House (ACH) Authorization Form.

B. The Paying Agent shall pay, or cause to be paid, on each Payment Date, the Debt Service Amount to the registered owners of the Bonds ("Bondholders") at their addresses appearing on the registrar books and records maintained by the Paying Agent ("Registrar"), by check or wire transfer on the Payment Date, in then lawful money of the United States of America, subject however to Section II(C), below.

C. The Paying Agent shall hold the Debt Service Amounts deposited in a fiduciary capacity for the exclusive benefit of the Issuer and the Bondholders and segregated from all other funds of the Paying Agent. The Paying Agent shall have no obligation to (i) pay the Debt Service Amount due Bondholders unless the Issuer provides adequate and immediately available funds on or prior to the Payment Date in accordance with this Agreement, or (ii) credit the Issuer with interest on the amounts so deposited.

FEES OF PAYING AGENT: The Paying Agent shall perform, or cause to be performed, as applicable, the services described in the attached listing of Agency Services.

COMPENSATION: Issuer shall pay to the Paying Agent the compensation, and reimbursement of its expenses incurred in connection with this Agreement, in accordance with the attached Schedule of Fees, as it may be amended from time to time upon thirty (30) days prior written notice from Paying Agent to Issuer.

INDEMNITY/LIABILITY: The Issuer shall be responsible for all taxes, expenses, fees and costs, including counsel fees and expenses, incurred under this Agreement and shall indemnify, defend and save the Paying Agent harmless from any and all liabilities and damages incurred or arising in connection with this Agreement, including without limitation reasonable attorneys' fees and costs of defense, except insofar as such liabilities and damages result from the Paying Agent's own gross negligence or willful misconduct.

VI. MISCELLANEOUS PROVISIONS :

Municipal Bond Insurance: The Issuer and Paying Agent agree to comply with the written policy and procedures in effect under any municipal bond insurance policy for the Bonds, if applicable.

Securities Depository of Book-Entry Bonds: The Issuer and Paying Agent agree to comply with the written policy and procedures in effect of any securities depository to maintain the Bonds in book-entry form, if applicable.

INSPECTION: The Issuer, upon reasonable notice, may inspect the Paying Agent's books and records relative to the Bonds and its performance under this Agreement. The Issuer consents to any inspection of the Paying Agent's books and records by regulatory authorities.

VIII. NOTICES: All written notices or instructions delivered under this Agreement shall be addressed as follows:

Paying Agent - TD Bank, National Association, Institutional Trust, 1006 Astoria Boulevard, Cherry Hill, New Jersey 08034

Issuer - City of Newark, in the County of Essex, New Jersey, 828 Broad Street, 5th Floor, Newark, New Jersey 07102.

IX. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of STATE.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed as of the ___ day of ____, 2014.

TD Bank, National Association,
as Paying Agent

City of Newark, in the County of Essex, New Jersey,
as Issuer

By: _____
Name:
Title:

By: _____
Name: Danielle Smith
Title: Acting Director of Finance

AUTOMATED CLEARING HOUSE (ACH) AUTHORIZATION FORM

I, an authorized representative of the account owner named below, hereby authorize TD Bank, N.A. to initiate debit and/or credit entries to the account indicated below. This authorization shall remain in full force and effect until written notification is delivered regarding changes and/or termination, in such time and manner to afford a reasonable opportunity to act upon.

**Account Owner
Address**

Telephone

Bank Name

Bank ABA Number

Bank Address

Account Title

Account Type

(circle Checking or Savings)

Account Number

Print Authorized
Representative's
Name

Title

Signature

Date

This form may be copied for future use.

AGENCY SERVICES

BOND REGISTRAR :

- A. Maintain at its principal corporate trust office the Issuer's books and records of Bondholders for the registration, exchange and transfer of Bonds, if applicable.
- B. Establish new Bondholder records and posting debits and credits to the Issuer's Registrar.
- C. Examine Bonds surrendered for transfer for genuineness or alterations and proper endorsement accompanied by sufficient written instrument of transfer with guaranty of signature.
- D. Issue new Bonds in exchange for transfer in proper forms of registration, authentication by manual signature of a duly authorized officer of the Bank and delivered in a timely fashion as prescribed by law.
- E. Maintain stop transfer file of Bonds.
- F. Cancel transferred and paid Bonds and provide for the periodic return of same, properly certified, to the Issuer.
- G. Maintain an unissued supply of Bonds provided by Issuer to facilitate transfers in a safe and secure environment, which supply shall be renewed by Issuer from time to time upon written request.
- H. Review and approve satisfactory evidence of and indemnity for lost, stolen or destroyed Bonds and the replacement thereof.
- I. Notify Bondholders as required of any redemption of the Bonds and provide such other communication as reasonably requested by Issuer.
- J. Respond to all Issuer and Bondholder correspondence, inquiries and requests.
- K. Furnish the Issuer with a certified description of Bondholder information upon request.

L. Furnish the Issuer and its Auditors with certified confirmations upon request.

II. **PAYING AGENT :**

- A. Disburse interest due Bondholders upon each Payment Date which appear on the Registrar as of the record date, subject to Section II(C) of the accompanying Agreement.
- B. Disburse matured principal due Bondholders upon each Payment Date which appear on the Registrar as of the record date upon presentation and surrender of the Bonds, subject to Section II(C) of the accompanying Agreement.
- C. Provide IRS tax withholding and reporting information.
- D. Reconcile all paid and outstanding checks and provide for the periodic return of unclaimed Debt Service Amounts to the Issuer or appropriate state or local government, as applicable.
- E. Notify Issuer of Debt Service Amounts prior to each Payment Date.
- F. Respond to all Issuer and Bondholder correspondence, inquiries and requests.
- G. Furnish the Issuer a certified description of debt service payments to Bondholders upon request.

SCHEDULE OF FEES

***Re: \$ _____ NEWARK CITY, ESSEX COUNTY, NEW JERSEY
QUALIFIED SEWER UTILITY BONDS, SERIES 2014__***

BOND REGISTRAR & PAYING AGENT

- A. Acceptance Fee (one time): \$ _____
- B. Annual Administration Fee (in advance): \$ _____
- C. Out of Pocket Expenses (in arrears): At Cost

This Schedule of Fees is subject to amendment in accordance with the accompanying Agreement, and shall renew (subject to such amendment) annually each bond principal payment date.

If bonds are issued in book-entry form and subsequently removed, then Schedule of Fees in effect as Bond Registrar and Paying Agent for certificated bonds may be applied.

By: _____
Name: Danielle Smith
Title: Acting Director of Finance